

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 9, 2008

**D051900 Uybungco v. Superior Court of San Diego County/San Diego Police
Department**

The opinion filed May 21, 2008, is ordered certified for publication.

D052846 In re Threats

The petition is denied.

D052924 Neishabouri v. Moussavian

The appeal filed April 22, 2008, is dismissed because appellant did not timely deposit costs for preparing the record on appeal (Cal. Rules of Court, rules 8.122(c), 8.130(b), 8.140).

D053136 Ganaway et al. v. The Superior Court of San Diego County/The People

The petition is denied.

D050493 Webb v. San Diego Pain Management Consultants et al.

This Court's order resubmitting the above-entitled case filed on April 23, 2008, is VACATED to allow oral argument for appellant Kevin Barkal whose bankruptcy stay has been lifted. The case will be placed on the September oral argument. Counsel will be notified in writing of the date and time. The case will be resubmitted upon completion of oral argument.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia Aaron

Clerk: D. Moore

D051221 People v. Perez

Cause called on merits. Russell S. Babcock, Esq. argued for appellant. Britton Lacy, Certified Law Student argued for respondent. Mr. Babcock replied. Cause submitted.

Court recessed at 9:32 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman

D051263 Alkire v. Vaughn et al.

Cause called on merits. Christopher Nelson, Esq. argued for appellant. Michael C. Sullivan, Esq. argued for respondent. Mr. Nelson replied. Cause submitted.

D050944 OPM Inc., et al. v. Metropolitan Transit Development Board

Cause called on merits. Bruce W. Beach, Esq. argued for appellant. John Morris, Esq. argued for respondent. Mr. Beach replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
June 9, 2008 (Continued)

Court recessed at 10:22 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice and The Honorable Associate Justices Patricia Benke and James McIntyre

D050894 Russell v. Russell

Cause called on merits. Paul Maly, argued for appellant in pro per. Sharon Voorhees, Esq. argued for respondent. Mr. Maly replied. Ms. Voorhees replied. Cause submitted.

Court recessed at 11:10 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre
Clerk: D. Moore

D051932 In re Kristen B., a Juvenile

Cause called on merits. Gary Seiser, Deputy County Counsel argued for respondent. Susan Bookout, Esq. argued for the minor. Monica Vogelmann, Esq. argued telephonically for appellant. Cause submitted.

D050595 City of El Centro v. Menvielle et al.

Cause called on merits. Ronald T. Vera, Esq. argued for appellant. Lowell F. Sutherland, Esq. argued for respondent. Mr. Vera replied. Cause submitted.

D051660 Lefkowitz v. Community Bankcorp Inc., et al.

Cause called on merits. Kyle Fisher, Esq. argued for appellant. Joshua D. Gruenberg, Esq. argued for respondent. Mr. Fisher replied. Cause submitted.

D050473 Ford Motor Credit Company v. Hunsberger

Cause called on merits. Peter Alexander Zamoyski, Esq. argued for appellant. Ryan Conor Donlon, Esq. argued for respondent. Mr. Zamoyski replied. Cause submitted.

Court recessed at 2:45 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia Aaron

D050732 Roberts v. Ross et al.

Cause called on merits. Sean Brew, Esq. argued for appellant. David Michael Parker, Esq. argued for respondent. Mr. Brew replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 9, 2008 (Continued)

Court recessed at 3:35 p.m. until Tuesday, June 10, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 10, 2008

D048913 People v. Smith

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Benke, J.

D051003 People v. Mansfield

The judgment is affirmed. Huffman, J.; We Concur: Benke, Acting P.J., Aaron, J.

D051753 People v. Jenkins

The judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Benke, J.

D050426 People v. Munoz

The convictions and judgment are affirmed, as modified, to strike the terms imposed for the prison priors (§§ 667.5, subd. (b)), with directions to the trial court to prepare an amended abstract of judgment and submit it to the Department of Corrections and Rehabilitation; in all other respects, the judgment is affirmed. Huffman, Acting P.J.; We Concur: Haller, J., McIntyre, J.

D051393 People v. Adams

The judgment is modified so that it imposes only one \$200 restitution fine and one \$200 probation revocation restitution fine. As so modified, the judgment is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Haller, J.

D050707 People v. Belman

The order is modified as set forth herein and is otherwise affirmed in its entirety. McIntyre, J.; We Concur: McConnell, P.J., Benke, J.

D052928 Davis v. Wright

The appeal is dismissed on the ground it is taken from a nonappealable order.

D053052 Wells v. J & K Equities Inc., et al.

Because appellant did not timely pay the filing fee, the appeal is dismissed.

D051399 People v. Nowling

The judgment is affirmed. McConnell, P.J.; We Concur: Benke, J., Huffman, J.

D052114 In re Ricky L., a Juvenile

The orders are affirmed. Haller, Acting P.J.; We Concur: O'Rourke, J., Irion, J.

D053164 In re Angelica V. et al. on Habeas Corpus

The petition for writ of habeas corpus and request for stay have been read and considered by Justices Nares, McDonald and Aaron. The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 10, 2008 (Continued)

D052936 Danielisa G. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Danielisa G. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Danielisa G. is DISMISSED.

Response to the Petition for Extraordinary Writ filed June 9, 2008, by Carey J. is due on or before June 25, 2008.

D053084 In re Peterson on Habeas Corpus

The petition for a writ of habeas corpus has been read and considered by Justices Huffman, McDonald and Aaron. We take judicial notice of San Diego Superior Court files SCD202708 and SCD203175. On April 17, 2007, Nina Lesa Peterson entered two negotiated guilty pleas. In case SCD202708, Peterson admitted possessing cocaine base for sale with a 1999 conviction for the same crime. In case SCD203175, Peterson admitted possessing cocaine base for sale while released from custody on bail. The court granted the People's request to dismiss the remaining charges. On May 29, 2007, the court sentenced Peterson to the stipulated term of seven years and four months: the low term of three years in SCD202708, plus one-third of the four-year middle term (16 months) in SCD203175, plus three years for the prior drug conviction.

Peterson contends she was denied her constitutional rights to a jury trial and to confront witnesses. The minute order of the April 17, 2007, hearing reflects Peterson executed a "*Blakely* waiver" and the change of plea form reflects she initialed the boxes giving up her "right to a speedy and public trial by jury" and her "right to confront and cross-examine all the witnesses against [her]." At no time did Peterson move to withdraw her plea and she has not shown that the negotiated plea was other than knowing and voluntary. Peterson claims the sentence is cruel and unusual punishment because it is disproportionate to other sentences for the same conduct. As noted, Peterson was sentenced to the *low* and *middle* terms. The probation report reflects Peterson has a lengthy criminal history beginning in 1988, consisting of convictions for disorderly conduct, grand theft, prostitution, being under the influence of a controlled substance, illegal possession of a firearm and possessing cocaine base for sale. She has not established that her sentence is disproportionate. Peterson received the benefit of her plea bargain.

The petition is denied.

D051873 In re Marriage of Ogdon

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D052939 Jean R. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Jean R. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

Court convened at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 10, 2008 (Continued)

Present: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion
Clerk: D. Moore

D050926 Farina v. Wedbush et al.

Cause called on merits. Lincoln Browning Quintana, Esq. argued for appellant. Nanette Farina, argued for respondent, in pro per. Mr. Quintana replied. Cause submitted.

D051410 Lopez et al. v. Imperial County Sheriff's Department et al.

Cause called on merits. Robert William Krause, Esq. argued for appellant. Jeffrey E. Stockley, Esq. argued for respondent. Mr. Krause replied. Cause submitted.

D050333 County of San Diego et al. v. San Diego NORML et al.

Cause called on merits. Thomas D. Bunton, Deputy County Counsel. argued for appellant, County of San Diego. Alan L. Green, Deputy County Counsel, argued for appellant, County of San Bernardino and etc. Peter A. Krause, Esq. argued for respondent, State of California and etc. Adam Brett Wolf, Esq. argued for respondent, San Diego NORML and etc. Joseph David Elford, Esq. argued for respondent, Christakes and etc. Mr. Bunton replied. Mr. Green replied. Cause submitted.

Court recessed at 11:00 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion
Clerk: D. Moore

D050466 People v. Rubino

Cause called on merits. Anthony J. Dain, Esq. argued for appellant. Garrett Beaumont, Deputy Attorney General argued for respondent. Mr. Dain replied. Cause submitted.

D051584 In re Rothwell on Habeas Corpus

Matter called on merits. John Patrick Dwyer, Esq. argued for petitioner. Gregory Marcot, Deputy Attorney General argued for respondent. Mr. Dwyer replied. Matter submitted.

D051018 Brown v. Edgewater Powerboats, LLC.

Cause called on merits. Patricia Jo Custer, Esq. argued for appellant. Ira James Harris, Esq. argued for respondent. Ms. Custer replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 10, 2008 (Continued)

D051201 Evans v. Evans

Cause called on merits. Linda A. Evans, argued for appellant, in pro per. No appearance by Thomas C. Evans. Cause submitted.

Court recessed at 2:12 p.m. until Wednesday, June 11, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 11, 2008

D052156 In re Jack C. III, a Juvenile

The judgment is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D051960 Volpe v. Superior Court of San Diego County/People

Let a writ issue directing the appellate division of the superior court to vacate its order of October 30, 2007, and to enter a new order consistent with this opinion. The stay issued by this court on November 26, 2007, will be vacated when this opinion is final as to this court. Huffman, Acting P.J.; We Concur: Nares, J., Irion, J.

D053000 In re Haggerty on Habeas Corpus

The petition is denied.

D052227 In re Davis on Habeas Corpus

The petition is denied.

D048951 People v. Rodriguez

The requests for publication are denied.

D051283 People v. Averhart

The court has reviewed the record in light of *People v. Wende* (1979) 25 Cal.3d 436 and requests further briefing on whether the trial court erred in imposing the upper term on count one in light of *People v. French* (2008) 43 Cal.4th 36 and the various issues raised by that case, including waiver.

Appellant shall provide the court a brief on this issue within 20 days. Respondent shall file a brief within 20 days thereafter and appellant shall have 10 days to reply. Briefing on this issue may be by letter. If oral argument is desired on this issue, a request shall be filed within 10 days of the close of supplemental briefing.

D053163 City of San Diego et al. v. Superior Court of San Diego County/Ghiotto et al.

The petition for writ of mandate has been read and considered by Justices Huffman, McDonald and Aaron. The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

June 11, 2008 (Continued)

D052212 People v. Morgan

The court has reviewed the record in light of *People v. Wende* (1979) 25 Cal.3d 436 and requests further briefing on whether the trial court erred in imposing the upper term on count one in light of *People v. French* (2008) 43 Cal.4th 36 and the various issues raised by that case, including waiver.

Appellant shall provide the court a brief on this issue within 20 days. Respondent shall file a brief within 20 days thereafter and appellant shall have 10 days to reply. Briefing on this issue may be by letter. If oral argument is desired on this issue, a request shall be filed within 10 days of the close of supplemental briefing.

D052223 Williams v. Interinsurance Exchange of the Automobile Club

In accordance with this court's June 4, 2008, order and California Rules of Court, rule 8.244(a)(3), the parties' stipulation to dismiss the appeal is ACCEPTED by the Court. The appeal is DISMISSED and the remittitur is ordered to issue immediately.

Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

Clerk: D. Moore

D049579 People v. Estrada

Cause called on merits. Martha L. McGill, Esq. argued for appellant. Lynne McGinnis, Deputy Attorney General argued for respondent. Ms. McGill replied. Cause submitted.

D050795 Emerald Bay Financial Inc., et al. v. Stojavljevic et al.

Cause called on merits. Samy S. Henein, Esq. argued for appellant. Gregg Allen Johnson, Esq. argued for respondent. Mr. Henein replied. Cause submitted.

D050922 Pavey v. Farmers Insurance Exchange et al.

Cause called on merits. Robert Axel Olson, Esq. argued for appellant. Raymond Alan Greenberg, Esq. argued for respondent. Mr. Olson replied. Cause submitted.

Court recessed at 10:39 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke

Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 11, 2008 (Continued)

D051211 In re Cristian S., a Juvenile

Cause called on merits. Grace Elizabeth Clark, Esq. argued for appellant. Jennifer Chou, Certified Law Student argued for respondent. Ms. Clark replied. Cause submitted.

Court recessed at 2:05 p.m. until Thursday, June 12, 2008 at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 12, 2008

D051605 People v. Saenphansiri

The judgment is affirmed. Irion, J.; We Concur: McConnell, P.J., Benke, J.

D050808 Sempra Energy Resources v. California Department of Water Resources/Niggli et al.

California Department of Water Resources' motion to dismiss the appeal and impose sanctions is denied. The trial court's order denying the motion to compel arbitration is affirmed. Irion, J.; We Concur: Haller, Acting P.J., O'Rourke, J.

D051048 2705 Garnet LLC v. Ito

Order affirmed. Respondent to recover its costs on appeal.³ Benke, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

³ Respondent requests that we order Ito to pay its attorney fees on appeal. (See § 425.16, subd. (c); *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman* (1996) 47 Cal.App.4th 777, 785). We decline to do so. The motion and appeal, while unsuccessful, do not appear to be frivolous or designed solely for the purpose of delay.

D051604 People v. Guerra

The judgment is affirmed. Haller, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

D049924 People v. Gandara

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D050049 Meek v. Martino

The appeal is dismissed. Martino is entitled to costs on appeal. McConnell, P.J.; We Concur: Nares, J., O'Rourke, J.

D052512 In re Malik M., a Juvenile

Upon filing a written abandonment of appeal, the appeal is dismissed and the remittitur is ordered to issue immediately.

D050357 People v. Rendon

The petition for rehearing is denied.

D049578 People v. Harris

The petition for rehearing is denied.

Court convened at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 12, 2008 (Continued)

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion
Clerk: D. Moore

D051042 Joyner et al. v. Yeung

Cause called on merits. Ken Yeung, argued for appellant, in pro per. Cause submitted.

Court recessed at 9:15 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron
Clerk: D. Moore

D049431 People v. Gomez

Cause called on merits. George L. Schraer, Esq. argued for appellant. Elizabeth Hartwig, Deputy Attorney General argued for respondent. Mr. Schraer replied. Cause submitted.

D050232 County of San Diego v. Crystal Lakeside Village Center LLC

Cause called on merits. Robert M. Miller, Esq. argued for appellant. Judith A. McDonough, Deputy County Counsel argued for respondent. Mr. Miller replied. Cause submitted.

Court recessed at 2:33 p.m. until Friday, June 13, 2008 at 9:00 a.m.

D051648 Meyer et al. v. Scandalios

The judgment is reversed insofar as the superior court sustained Scandalios' demurrer to the Meyers' claim for assault and is affirmed in all other respects. Scandalios is awarded his costs on appeal. McIntyre, J.; We Concur: Benke, Acting P.J., Aaron, J.

D053160 Kassab v. Bailey

The petition is denied.

D050932 Cuddeback v. Yeung et al.

Order and judgment affirmed. Appellants to pay respondent's costs on appeal. Haller, J.; We Concur: Nares, Acting P.J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 12, 2008 (Continued)

D049192 People v. Contreras et al.

As to Gongora and Torres, the judgments are affirmed in all respects.

As to Contreras, we modify the judgment to strike the gang enhancements on counts 1 and 6. As so modified, the judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment and transmit a copy to the Department of Corrections and Rehabilitation. Haller, J.; We Concur: Nares, Acting P.J., Irion, J.

D052822 Paulette A. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

No timely petition for writ relief has been filed. The notice of intent is deemed to be abandoned. The case is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 13, 2008

D050286 People v. Thomas

The order of a restitution fine, in the amount of \$895 payable to the El Cajon Police Department, is reversed. All other aspects of the judgment are affirmed. Benke, Acting P.J.; I Concur: Irion, J., Concurring and dissenting: Aaron, J.

D051303 People v. Macias

The judgment is affirmed. Haller, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D048882 In re Red Light Photo Enforcement Cases

The judgment is affirmed. Defendants are entitled to costs on appeal. McConnell, P.J.; We Concur: Aaron, J., Irion, J.

D051922 In re J.B. et al., Juveniles

The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Haller, J.

D052685 The People ex rel. Department of Transportation v. Anderprises, Inc.

Upon written request filed by appellant, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

D052700 Lubitz v. O'Laughlin

Pursuant to California Rules of Court, rule 8.140, the appeal filed March 10, 2008, is DISMISSED for appellant's failure to timely designate the record (Cal. Rules of Court, rule 8.121(a)).

D053166 Miller v. The Superior Court of San Diego County/The People

The petition is denied.

D053038 Marina C. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Marina C. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case as to Marina C. is DISMISSED.

Court convened at 10:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Patricia Benke and James McIntyre
Clerk: D. Moore

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
June 13, 2008 (Continued)

D048743 County of San Diego v. State of California et al.

Cause called on merits. Anthony Hakl, Deputy Attorney General argued for appellant/cross-respondent. Timothy M. Barry, Deputy County Counsel argued for respondent/cross-appellant, County of San Diego. Wendy Phillips, Deputy County Counsel argued for respondent/cross-appellant. County of Orange. Mr. Hakl replied. Mr. Barry replied. Cause submitted.

Court adjourned at 11:05a.m.